

Search and Seizure

312.1 PURPOSE AND SCOPE

Both the federal and state constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Easton Police Department personnel to consider when dealing with search and seizure issues.

312.2 POLICY

It is the policy of the Easton Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate

312.3 SEARCHES

The United States Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

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312.3.1 CONSENT SEARCHES

The consent to search one's person or property under his control is lawful, if the consent is:

- (a) Made with the knowledge that he need not consent to a search;
- (b) Given freely and voluntarily without duress or coercion, and;
- (c) Is clear and explicit.

Any waiver will be examined by the court and the State will have to show clear and convincing evidence that the consent was freely and voluntarily given by a person who was aware of his right not to consent.

The officer should explain to the person that he has a right to refuse to consent to a search without a warrant. If the person indicates that he would like to consult with an attorney or anyone else before deciding whether to consent, he should be given the opportunity to do so.

Consent to search must be given freely and voluntarily. Any coercion or intimidation, actual or implied, will invalidate the consent. An officer who threatens to "go get a search warrant" would probably have any resulting consent ruled invalid.

Before an officer relies upon consent to search, he must be sure the person is in fact giving consent to the search. Consent to enter is not a consent to search. But after legal entry, whatever evidence is in open view, may be seized.

Written consent should be obtained on a Form 64, "Voluntary Consent to Search," whenever practicable. A signed and witnessed waiver provides the best proof of clear and voluntary consent.

A valid consent to search may only be given by the person with a right to occupy the premises. Examples would include, but are not limited to:

- (a) A landlord cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the premises.
- (b) A host can give consent to a search of premises occupied by a guest, but if a particular area of the premises to be searched has been set aside for the long-term guest's exclusive use, or if the search is of an object which is exclusively the guest's, the consent of the host may not authorize a search.
- (c) A parent can give consent to search of premises occupied by a dependent child, unless the child is paying rent.
- (d) An employee cannot consent to the search of an employer's premises, unless he has been delegated general authority to act as the agent of the employer. An employer may generally consent to a search of premises used by an employee in his work, unless it is a particular area set aside for the employee's exclusive use.

If two or more persons have equal rights to the occupation of the premises, a consent to search may be given by any one of them, but only for the areas common to all. It must be understood that the refusal to consent by one occupant may override the consent given by the other. Examples may include, but are not limited to:

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- (a) Generally, one spouse can consent to a search of a residence shared with the other spouse.
- (b) One joint tenant can consent to a search of joint-held premises.
- (c) A partner can consent to a search of partnership premises.

Valid consent to search may be presumed to continue until all areas specified in the consent have been searched. Consent may be revoked at any time before the search is completed. If consent is revoked prior to completion of the search, all evidence found prior to the revocation may be retained. This evidence may be used as probable cause for a subsequent warrant or for an immediate arrest and incidental search.

312.3.2 INCIDENT TO ARREST

An officer may search a person and the immediate area within the reach of the person being arrested upon a lawful arrest to:

- (a) Protect the officer and others.
- (b) Prevent escape or suicide.
- (c) Seize fruit, instrumentalities and contraband relating to the arrest.
- (d) Prevent the destruction of evidence.

If practical, the arresting officer should conduct the search and the search must be conducted as soon as practical after the arrest. If it is not feasible to search immediately after making the arrest, the officer should do so as soon after the reason for the delay has passed.

Notwithstanding the fact that a prisoner has been previously searched, when he is transferred from the custody of another officer, a subsequent search may be made for the protection of the receiving officer.

Generally, anything in the possession of the person being searched may be subject to seizure, whether it be for evidence, the protection of the officer, safekeeping, fruits of the crime, fruits of another crime, contraband, etc.

If an arrestee is concealing something in his mouth, the officer may use reasonable force to prevent the person from swallowing the evidence and to remove the object.

312.3.3 VEHICLE SEARCHES

In *Carroll v. United States*, a warrantless search of a readily mobile motor vehicle by a police officer who has probable cause to believe the vehicle contains items subject to seizure is not unreasonable under the Fourth Amendment.

The controlling consideration in the warrantless search of a vehicle is probable cause to believe the vehicle contains items that are connected with criminal activity and are thus subject to seizure.

The object of the search will always determine the scope of the search. If probable cause establishes that a vehicle contains a specific item, then the reasonableness and scope of the search will be determined by the nature of the item sought and where it might be concealed. For

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example, an officer who has probable cause to believe that a shotgun is in the vehicle, looking in the glovebox for the shotgun would be outside the scope of the search.

Whenever possible, the search should be conducted immediately at the scene of where the vehicle is stopped. If however, the surrounding circumstances make an immediate search on the highway unsafe or impractical, the vehicle may be moved to a more convenient or appropriate location.

Vehicles that come into custody of the Department will be inventoried as to their contents to protect the owner against property loss, to avoid a claim of destruction and to protect the police against any hidden danger.

The inventory must be carried out as part of established agency policy.

312.3.4 SCHOOL SEARCHES

Upon the authority of a search warrant, an officer may only search that part of the school premises described in the search warrant, and school officials should cooperate in performing the search.

The search may not include a pupil's assigned locker, unless specified in the search warrant.

Officers may search the premises of a school in any case where the search is essential to prevent imminent danger to the safety or welfare of the pupil or other persons or school property.

Officers may search a pupil not under arrest only when the officer has a reasonable suspicion that the pupil is concealing a weapon which poses a danger to others.

Officers may not request a school official to perform a search of a pupil.

Officers shall make every effort to conduct searches in a manner minimizing the disruption of the normal school routine and embarrassment to pupils affected.

312.3.5 STOP AND FRISK

This is not an arrest; it is a "stop." The search permits an officer to conduct a carefully limited examination of an individual's outer clothing. The purpose of the examination is the discovery and seizure of offensive weapons, handgun, dirk knife, bowie knife, switchblade, metal knuckles, razor, nunchaku or any other dangerous or deadly weapon(s) concealed upon or about the individual.

This search is permitted when:

- (a) It is reasonably suspected that an individual has committed, is committing, or is about to commit a crime; or;
- (b) The individual is reasonably suspected to be armed and dangerous and immediate action must be taken to protect the member or the public.

Both the "stop" and the "frisk" must be supported by reasonable and articulable suspicion. A mere hunch will not suffice. The Supreme Court in *Terry v. Ohio* said: "Would the facts warrant a man of reasonable caution in the belief the action taken was appropriate?"

An officer may stop a subject when he observes unusual conduct, which leads him to reasonably believe, in the light of his experience and training that criminal activity may be in progress. Once sufficient reasonable suspicion is established and the officer decides to initiate a stop, the officer will:

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- (a) Clearly identify himself as a police officer.
- (b) Question the individual to discover his name, address and an explanation of his actions.
 - 1. The suspect is not compelled to supply the answer to these or any other questions.
 - 2. If the suspect refuses to answer the officer's questions or identify himself, he may be questioned further, but may not be unduly detained nor deprived of his freedom of movement in any significant way, unless the officer is prepared to make a formal arrest.
 - 3. The failure to answer questions, or answers considered unsatisfactory are not alone sufficient to constitute probable cause for an arrest without a warrant.
 - 4. The failure or refusal to answer questions does not bar a "frisk" if the officer reasonably suspects danger to his own or another's safety.

The frisk that is permitted is limited to a patting down of the suspect's outer clothing for the discovery of weapons and for no other purpose. If the frisk fails to disclose an offensive weapon, no further search may be made. If the frisk indicates reasonable suspicion that the suspect has an object on his person that could be a weapon, the officer is authorized to search that part of the suspect's clothing containing such object, but he may not search any further.

If the object felt and found in the course of the frisk is in fact an offensive weapon and possession thereof violates the law, the officer may arrest the suspect committing a crime in his presence. Incident to such a lawful arrest, the officer may make a further, more detailed search of the suspect and his immediate surroundings. On the other hand, if the officer searches in or beneath the clothing of the suspect in the belief that an object felt in patting him down is a weapon and it turns out not to be a weapon, but an item of contraband or evidence of a crime, the object may nevertheless be used to justify arrest of the suspect.

Officers conducting a stop and frisk pursuant to this policy shall complete a MSP Firearms Report Form 97, regardless of whether a handgun is found, as well as, any related filed reports necessary as a result of this stop and frisk.

312.3.6 PLAIN VIEW

Under the plain view doctrine, if an officer is lawfully in a position from which they view an object, if its incriminating character is apparent, and if the officer has a lawful right of access to the object, he may seize it without a warrant.

Any officer lawfully positioned may seize:

- (a) Contraband they know to be illegal by its mere presence (cocaine, sawed off shotgun.)
- (b) Items that an officer has probable cause to believe are evidence of a crime (bloody knife, known stolen radio.)

If a lawfully positioned officer observes and seizes contraband or evidence in his view, further searching may be done with consent, search warrant, or exigent circumstance.

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An officer may use his experience and training to assist in determining whether a particular item may be seized.

312.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) Whenever practicable, a search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.
- (f) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 1. Another officer or a supervisor should witness the search.
 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

312.5 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.